



DEPARTMENT OF THE NAVY
COMMANDER MILITARY SEALIFT COMMAND
914 CHARLES MORRIS CT SE
WASHINGTON NAVY YARD DC 20398-5540

REFER TO:

COMSCINST 5102.1C
N2
14 October 2003

COMSC INSTRUCTION 5102.1C

Subj: CONDUCT AND REPORTING OF INVESTIGATIONS

Ref: (a) JAGINST 5800.7C
(b) DODINST 6055.7

Encl: (1) COMSC Staffing Flowchart for JAGMAN Investigations
(2) Sample Action Code Tasking Memorandum

1. Purpose. To establish standards and provide guidance for conducting and reporting investigations of accidents, injuries, property losses, mishaps and other incidents involving Military Sealift Command (MSC) operations.
2. Cancellation. COMSC Instruction 5102.1B.
3. Applicability. This instruction is applicable to commanders of subordinate MSC commands, Commanding Officers, Officers in Charge, Officers and other persons appointed to conduct investigations, and to Headquarters and subordinate command staff personnel charged with reviewing investigation reports.
4. Background
 - a. In the course of MSC operations, a variety of incidents may occur, such as collisions, groundings, stevedore damage (both to USNS and commercial ships), damage by ship repair contractors, vehicle accidents, deaths, personal injuries and others. Also, there may be incidents without any claims aspect but which give rise to issues involving improper seamanship; improper operation of ships systems; questionable management practices in accounting for funds or equipment; improper personnel practices; medical issues; contracting procedures; improper performance of duty, loss of Government funds; compromise of classified material; and others. The seriousness of these incidents varies widely, but any such incident may require establishing corrective measures and procedures to prevent recurrences. Thus, it is essential that MSC activities compile the essential facts and documents pertaining to any incidents that affect MSC operations.

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b. The principal purposes of investigations are to ascertain and memorialize facts needed to determine cause, fault or liability; corrective or mitigative actions to be taken; capability to continue performance of missions; and to improve the command through lessons learned.

5. Policy

a. It is Commander, Military Sealift Command (COMSC) policy to conduct timely and thorough investigations in accordance with references (a) and (b).

b. The paramount interest of COMSC is that the technical and legal abilities of COMSC and its subordinate commands are fully utilized to ensure proper development and evaluation of the facts; that COMSC is furnished with appropriate recommendations for all necessary corrective action by all subordinate commands; and that reports are forwarded to the Judge Advocate General of the Navy (Navy JAG), higher authority or other agencies of the Government as required by existing regulations.

c. To ensure the efficient use of resources, it is essential to determine the type and scope of investigation necessary as soon as possible after the incident. Routine inquiry into minor incidents may be handled locally, yet ensure that findings, opinions and recommendations that require COMSC cognizance or review are forwarded. This procedure may be accomplished by preliminary investigations described in reference (a) or by procedures established by COMSC subordinate commands.

6. Action

a. Investigation Necessary. Investigations will be ordered whenever required by references (a) and (b) or other regulation including COMSC instructions, or otherwise at the discretion of commanders, Commanding Officers or other persons in charge.

b. Responsibility for Ordering and Conducting Investigations. Upon notification of an incident or any event that meets the criteria of references (a) and (b) or other regulations including COMSC instructions, commanders of subordinate MSC commands shall initiate appropriate inquiry, in accordance with section 0204 of reference (a), to determine whether additional investigation is warranted and, if so, how it is to be conducted. Requests for guidance and assistance from other MSC commands, COMSC or legal counsel is appropriate and encouraged. If further investigation is warranted, commanders shall initiate an investigation commensurate with the severity of the incident that occurred under their cognizance. Usually, an administrative fact-finding body should be convened. In most cases, the appropriate fact-finding body will consist of one officer, pursuant to section 0213(a) of reference (a). In cases where an incident or event is of primary interest to COMSC, a Command Investigation shall be initiated and

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conducted in accordance with section 0209 of reference (a). In cases where an incident or event is likely to result in claims or civil litigation against or for the Department of the Navy or the United States, a Litigation-Report Investigation shall be initiated and conducted in accordance with section 0210 of reference (a). Both types of investigations shall be in the format prescribed at section 0217 of reference (a).

c. Special Considerations. Parts F and G of Chapter II and Chapter XII (Admiralty Claims) of reference (a) prescribe special considerations for specific types of incidents or events and should be consulted as appropriate.

d. Convening Orders. Convening orders shall comply with section 0212 of reference (a) using the format of Appendix A-2-c. In addition, the appointing order shall specify the date by which the Investigating Officer is to complete the investigation, which date shall comply with the appropriate time periods for the type of investigation initiated. COMSC shall be notified by message of all investigations initiated. When an investigation is initiated by a message appointing order, inclusion of COMSC as an "INFO" addressee will constitute such notification.

e. Appointment of Investigating Officers. Reference (a) authorizes the selection of commissioned officers, warrant officers, senior enlisted persons and civilian employees as Investigating Officers to conduct Command or Litigation-Report Investigation. The Investigating Officer's background is essential in stating valid opinions and useful recommendations in the report of investigation. Accordingly, persons assigned as an Investigating Officer should possess appropriate training and experience in the subject matter of the investigation. Investigating Officers must have sufficient experience in the type of activity out of which an incident requiring investigation arises in order to know what the personnel involved should have properly done. Investigating Officers must be capable of understanding the nature of any particular difficulties with which those persons were faced that had a bearing on their conduct. Whenever practical, an Investigating Officer should be senior in rank to any individual whose conduct is subject to inquiry. In any case in which a Master's performance of duty may be subject to inquiry, only an officer with command at sea experience shall be appointed as Investigating Officer.

f. Relationship of Investigations and Disciplinary Action. Section 0218 of reference (a) provides guidance concerning recommendations of disciplinary action for military personnel. With respect to civil service personnel, the Investigating Officer may recommend in the report that "disciplinary action should be considered." The Investigating Officer shall not propose any specific disciplinary action with respect to civil service personnel. Facts established by the Investigating Officer may be the basis for a separate disciplinary action by appropriate authority.

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g. Timeliness. All MSC investigations shall be processed within the maximum time limits specified in reference (a) for the type of investigation initiated.

(1) Circumstances, such as, complexity of subject matter, availability of witnesses, remoteness of ship, preventing risk of compromise of investigations required by regulations other than reference (a), logistic considerations and others, may necessitate deviations from the maximum time limits. Investigating Officers shall request extensions of time from the convening authority. All such requests and authorizations shall be included as enclosures to the investigation report. With respect to subsequent reviewers of investigations, any reasons for processing times exceeding limits shall be documented by the responsible endorser.

(2) Investigating Officers conducting investigations involving time-chartered ships and contractor operated USNS ships must recognize that commercial insurance interests may be involved, and for that reason private sector personnel may refuse to provide statements or documents under their control. Difficulties of this nature should be brought to the attention of the convening authority immediately. The involvement of commercial insurance and a private sector operator may be a consideration for requesting an extension of time for completing the investigation. The convening authority must approve extensions of time under these circumstances in advance. All such requests and authorizations are to be included as enclosures to the investigation report.

(3) In the case of investigations involving death, disappearance or serious injury to personnel, the maximum time limits in reference (a) are mandatory.

7. COMSC Staffing of JAGMAN Investigations

a. All reports of MSC investigations will be forwarded to COMSC in an envelope or a package clearly marked "COMSC INVESTIGATION" or "JAGMAN INVESTIGATION." The COMSC mailroom will forward it to COMSC Inspector General (IG) who will track the preparation of the endorsement/letter of approval for COMSC signature. The IG will conduct an initial review and will prepare a tasking memorandum (enclosure (2)), which assigns primary responsibility for preparation of the endorsement to the appropriate technical code (action code). The tasking memorandum will provide a suspense date for the action code to complete its work and is signed by N02. The action code will coordinate with other codes which are involved or have an interest in the incident under investigation, and will prepare a brief summary of the investigation's major findings, opinions and recommendations; the staff's recommendation for disposition and an appropriate endorsement (or letter of approval to the convening authority) for signature by COMSC. Proposed endorsements or letters of approval for Command Investigations shall address all findings of fact, opinions, recommendations and, as appropriate, modifications and/or action by previous endorsers.

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It shall state reasons for any disapproval, non-concurrence or disagreement with any of the foregoing. When the action code determines, after an initial review, that the incident under investigation involves issues under the cognizance of other codes, the action code will task the appropriate code to analyze the findings of fact, opinions and recommendations of the Investigating Officer and the actions by previous endorsers and respond to the action code within 14 calendar days. If the appropriate code(s) disagrees with any of the foregoing, that code shall provide to the action code its reasons therefore, in a clear, cogent, well written form suitable for incorporation directly into the synopsis and the COMSC endorsement. After staffing through any appropriate additional codes, the action code will forward the investigation and completed draft endorsement to the IG who shall review the endorsement for completeness and then forward the investigation to Counsel (N2) before submission to COMSC. Counsel will review the investigation and provide assistance to the action code in preparation of the endorsement, if requested. If no additional action is required on the endorsement, Counsel will return the endorsement to the IG who will ensure that the synopsis and endorsement (or letter of approval), ready for signature, is delivered to the Flag Secretary not later than 3 weeks from the date the investigation was received by COMSC. If, upon Counsel review, additional action is required, the endorsement will be returned to the IG for forwarding to the action code for resolution of any outstanding matters. The action code is responsible for completing the action and returning the endorsement to the IG as expeditiously as possible. The IG will then return the endorsement to Counsel for final review. After signature by COMSC, the investigation file will be returned to Counsel for retention.

b. Command Investigations are not normally forwarded for review outside of COMSC. Command Investigations shall be kept on file for at least 3 years. Litigation-Report Investigations are forwarded to Navy JAG.

8. Reports. The reporting requirement prescribed by this directive is RCS MSC 5102-1 and is effective for 3 years from the date of this instruction.

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D. A. LOEWER
Vice Commander

Distribution:

COMSCINST 5215.5

List I (Case A, B, C)

SNDL 41B (MSC Area Commands)

41C (NFAF East/West)

41D (MSC Offices)

41E (APMC)

41L (COMPSRONs)

MSC Reps

14 October 2003

N00I/N00Ia

DATE

MEMORANDUM

From: N02

To: ACTION CODE

Subj: same as JAGMAN INVESTIGATION subject

Ref: (a) COMSCINST 5102.1C

(b) COMSCINST 5440.8G

Encl: (1) JAGMAN Investigation Report

1. In accordance with reference (a), ACTION CODE is to review and prepare an appropriate endorsement/letter of approval to enclosure (1) for N00 signature. Coordinate with other staff codes as necessary and provide the endorsement with completed Staff Summary form to N00I for further staffing by SUSPENSE DATE. If an extension becomes necessary, contact the N00I POC listed below to coordinate change of suspense date.
2. Per reference (b), N00I will retain the original report and track this investigation. Both N2 and N00I are available at any time to provide advice and assistance.
3. N00I POC for this investigation is Mr. Marvin L. Wagner, N00Ia, 685-6278.
4. N2 POC for this investigation is Mr. Gregory Smith, 685-5160.

J. B. STROTT

Copy to (w/o encl):

N02

N2